Parole Board

M.

Govt. Pr.-15—78,406—3-11-53.

Home **(195 4) Department.**

MS **SERIES.**

G.O. No. 2455

Dated 17-8-1954

FOR MYSORE STATE

[Despatch Abstract.]

Prisoners - Advisory Board - Central Jail, Cannanore-Convict No. 3591, Kundu Shetty - Release - Ordered -.

O.F. 32/ — 70,10,558—20-1-54.

Jail Department

From (Name) Sri T S Ramachandran ICS

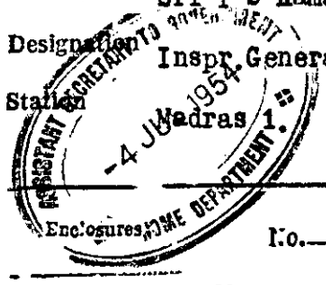
Designation Inspr General of Prisons

Station Madras 1.

Received ——— Registered ———

To

The Secretary to Government
Home Department
Madras



Enclosures

No. 2699/S4/54, dated 3-7-1954 195

Sir,

91421

Sub: Advisory Board - Central Jail Cannanore - Convict No. 3591 Kundu Shetty - Long Termer - Recommended - Papers submitted

---

Under rule 310-A(b) of Part I Madras Prison & Reformatory Manual Volume II I submit the following papers pertaining to the prisoner mentioned above for orders of the Government. These papers were placed before the Advisory Board which met at the Central Jail, Cannanore on 28-6-54.

1. Proceedings of the Board.
2. Recommendation Roll.
3. Advisory Board Working Sheet.
4. Nominal roll.
5. Reports of the Police & District Magistrate(including security particulars).
6. Copy of Judgment of the Lower Court.

2. I agree with the recommendation of the Board.

Enclos. 8

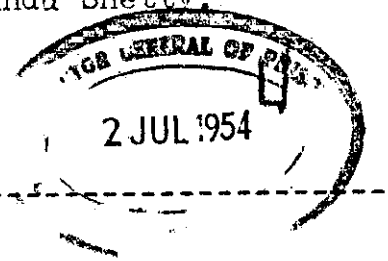
INSPECTOR GENERAL OF PRISONS.

k/p/3-7

EXTRACT FROM THE PROCEEDINGS OF THE ADVISORY BOARD MEETING HELD AT THE CENTRAL JAIL, CANNANORE ON THE 28TH JUNE 1954.

The Cases of the following long term convicts are recommended for conditional ~~xxxxx~~ release.

S.No.	Convict No. and Name.	Remarks.
2.	3591 Kundu Shetty.	Recommended on his furnishing a security for Rs.2000/-



-/True extract/-

Superintendent,
Central Jail, Cannanore.

Judl. (Jail II)-92—8,456—14-9-51.

Roll of convict recommended for conditional release under the Intermediate sentences scheme sanctioned in G.O. No. 667, Law (General), dated 26th February 1923.

1. Name of jail	CENTRAL JAIL, CANNANORE.
2. Convict number and name	3591 KUNDU SHETTY.
3. Father's or Husband's name	MANJAYA SHETTY.
4. Residential address including taluk and district.	KADUKETHU, UDIPI, S. KANARA.
5. Court by which the prisoner was convicted and case number.	SESSIONS JUDGE, S.KANARA. S.C.25/52.
6. Section of the I.P.C. or other law under which convicted.	304 PART- II I.P.C.
7. Date of sentence	6-8-1952.
8. Period of sentence	3 YEARS R.I.
9. Date on which convict completed two thirds of his sentence.	13-9-1954.
10. Unexpired portion of sentence on date of recommendation by the Board, including remission earned (remission granted in celebration of public events should be excluded).	Y. M. D. 0- 9- 18.

P.T.O.

11. Full " police " history with recommendation of the District Superintendent of Police.	1. There is no likelihood of any reaction in the village in the event of the premature release of the convict. (2) Except for some little heart burning, the relatives of the victim of the offence are not likely to entertain any feeling of vengeance against the convict since he has already undergone over half the period of his sentence. (3) His life may not be in danger. (4) Except for the offence for which he has been convicted his past conduct was good and he had not come to any adverse notice earlier. There is no objection to his premature release. (5) Though the convict himself is not solvent to any extent his father Manjaya Shetty is solvent up to an amount of Rs.2000/- and he is also willing to execute a bond for that amount on behalf of his son the convict referred to. (Sd) Dt. Supdt. of Police, S.Kanara.
12. Recommendation of the District Magistrate.	The premature release of Convict No.3591 Kundu Shetty is recommended. (Sd) Dt. Magistrate. S.K.
13. Remark of the Superintendent of the Jail on the conduct of the convict in prison.	Exemplary.
14. Recommendation of the Advisory Board with detailed reasons when the Board differs from the Superintendent of Police or the District Magistrate.	Recommended on his furnishing a security for Rs.2000/-.

CENTRAL JAIL, CANNANORE,

Dated 28- 6- 1954.

Superintendent

WORKING SHEET OF C.NO.3591 KUNDU SHETTY.

.....

Sentence..... 3 years.

Date of sentence..... 6- 8- 52.

Add 2½ years..... - 6- 2.

5- 2- 55.

Remission earned 109 days and likely to earn 9 6 days per month and G.C.R. 33 days- Total 142 days or. 22- 4-

Date of eligibility for Advisory board. 13- 9- 54.

Superintendent,
Central Jail, Cannanore.

FORM No. 52. (*See* Rule 879, Part I of Vol. II, M.P. and R.M.) Judl. (Jail II)-13.

NOMINAL ROLL OF MALE* CONVICT No. 3591 † A

Name Kundu Shetty S/o Manjaya Shetty

Residence (Village, Taluk and District.) Kadu Kethu : Udipi : S. Kanara.

Caste Hindu. Present age 19 years. Occupation Beedi Worker.

Section and Code under which imprisoned. 302 Part II I.P.C.

Original sentence of order and date. 3 years RI on 6-8-52.

Adjudicating Court and Calendar number of case. Sessions Judge : S. Kanara S.C. No. 25/52.

Unexpired term of sentence after deducting remission earned. 0 year(s) 9 Month(s) 18 Day(s).

Present state of health and fitness to undertake a journey.‡ 14

11,156—29-5-51.

Result of appeal (if any) Declined

Conduct in Jail Exemplary

Personal and descriptive marks ‡: Black mole 1 cm above the outer end of Rt. eyebrow
Scar 1 pie finger on the top of the left side of the head.

Remarks Clear Dear Rice - Edn. C
Remission earned 10 9 days

* Strike out and add "Female" when necessary.

† After the Prisoner's number, add his class A or B, according as he is classed as a Casual (and whether Star) or Habitual, respectively, and after the letter, add the number of previous convictions, thus—No. 3742 B-2.

‡ When a journey is about to be undertaken by a prisoner, the roll is to be signed by the Medical Officer.

§ Personal and descriptive marks are to be given when (1) rolls accompany prisoners transferred, (2) police assistance is sought for the recapture of an escaped prisoner (Rule 549, Part I of Vol. II, M.P. and R.M.)

Dated at Central Jail, 6 — 1956

Superintendent.

N. 610 6838/D/54

Convict No. [redacted] and Name [redacted]

Note:- The Government directed that the previous history of the prisoner should contain the information on the following points and the District Magistrate and the District Superintendent of Police are requested to furnish the same.

	Report of the Dt. Supdt. of Police. (2)	Opinion of the Dt. Magistrate. (3)
(1)		
What will be the reaction in the locality, if the prisoner is released prematurely.	There is no likelihood of any reaction in the village in the event of the premature release of the convict.	
2. What will be feeling of the relations of the victim of the offence who sufferred at the hands of the accd will be in the case prematurely released.	Except for some little heart-burning, the relatives of the victim to the offence, are not likely to entertain any feeling of vengeance against the convict, since he has already undergone over half the period of his sentence.	
3. Whether the life of the accused itself will be safe if he is released prematurely.	His life may not be in danger.	
4. Any Additional information relating to the prisoner.	Except for the offence for which he has been convicted, his past conduct was good and he had not come to any adverse notice earlier. There is no objection to his premature release.	

SOUTH KANARA COLLECTOR'S OFFICE
6 - MAY 1954
No.

Dt. Supdt. of Police, S. Kanara, District.

Dt. Magistrate, S. Kanara.

To

The Superintendent, Central Jail, Cannanore.

Dist. Magistrate, South Kanara

VIII

N. Dis 6838/D2/54.

Returned to the Supdt. Central Jail, Cannanore.

Though the convict himself is not solvent to any extent, his father Manjayya Shetty is solvent upto an amount of Rs 2000/- and is also willing to execute a bond for that amount on behalf of his son, the convict referred to.

The reference and the copy of the judgment, relating to the prisoner, are returned herewith.

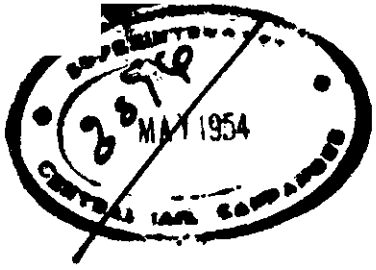
1.7.54

Dt. Supdt. of Jails,
North Kanara

1/7/54

1/7/54

N. Dis 2673 /54



Returned to the Superintendent Central jail, Cannanore.

2/. The premature release of convict No. 3591 Kundu Shetty is recommended.

13/5

Dist. Magistrate

12/5/54.6

12/5

C. No. 9/421 cts iv/54. Jail M.D.S. M of the Prisons 8/8/54

602—26-2-52.

HOME DEPARTMENT.

G.O. Ms. No. 2455 Dated 17.8.54

PRISONERS—Advisory Board { ~~The Penitentiary, Madras~~ / Central Jail, Cannanore } Convict No. (3591, Kundu Shetty) Release—Ordered.

READ—the following :—

P19f From the Inspector-General of Prisons, No. 2699/54/54 d. 3.7.54.

ORDER—

In exercise of the powers conferred by section 401 of the Code of Criminal Procedure, 1898, ~~His Excellency~~ the Governor of Madras hereby remits with effect from the 13th September 1954 P17f ~~the unexpired portion (s) of the sentence (s) of the imprisonment/transportation for life~~ passed on the prisoner(s) shown in the annexure to these proceedings subject to the condition that he/~~they~~ executes ~~will be of good conduct and will keep the peace for the period noted against them / a period of~~ a bond for Rs. 2000/- (Rupees Two Thousand) with a surety for a like sum, in the form prescribed in rule 502 (1) (b) of the M.P. Cr. Manual, Vol II. P35f

B 14/8/54 Supdt C.L

To 16 i

PJ 16/8/54

The Inspector-General of Prisons, Madras (with one spare copy).
" Superintendent, Central Jail, Cannanore
" Registrar, High Court, Madras. (With C.L). H. 16 Aug 54
" Additional District Magistrate (I). S. Kanara.
" Sessions Judge, South Kanara.
" Inspector-General of Police, Madras (with one spare copy).
" Secretary, Madras ~~Presidency~~ Discharged-Prisoners' Aid Society, 'Goschen Home', Teynampet, Madras.

State CENTRAL DESPATCH [illegible]

Despatched by [illegible]

Date 21 Aug 195 4 Despatcher's Initials.

[Annexure. P.T.O.]

ANNEXURE.

~~The Penitentiary, Madras~~
Central Jail, Cannanore

Number and name of Convict including father's name.	Residential address including taluk and district.	Sentencing Court and Case No.	Sentence and date.	Date on which release should take effect.	Period of good conduct.
3591, Kundu Shetty Son of Manjaya Shetty. P5 cf	Kadukethe, Udipi, South Kanara P5 cf	Sessions Judge S. Kanara. SC. No. 25/52 P1/5	R.I. for Para 5,	three years. 6.8.1952. P3/5	

P5
16-8-54.

14/8/54
16

JS.
16 Aug 54

Note:

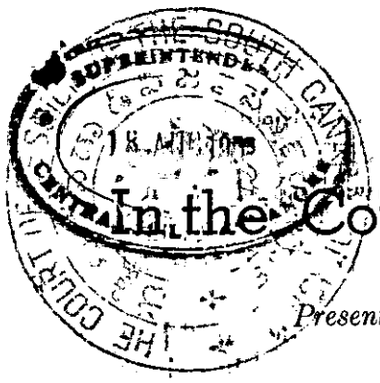
The draft order noted above is in accordance with the recommendation of the D.S.P, the collector of S. Kanara P11 & P5 cf and the Advisory Board. It has been reported by the D.S.P. P5 cf South Kanara that though the prisoner is not solvent P13 11 to any extent his father is solvent upto an amount of (for his son) Rs. 2000/- and is willing to stand surety. The Adv. Board has also recommended that a sum of Rs. 2000/- may be P3 cf taken as security amount. For orders whether the recommendation may be accepted. Subject to orders the draft provides for it.

P5
16.8.54

14/8/54.
16

Rs 2000/- may be accepted as the security amount. Draft approved.

JS.
16 Aug 54.



Assessor Case.

In the Court of Sessions, South Kanara.

August Sessions.

Present: SRI P. T. RAMAN NAYAR, I. C. S.

Sessions Judge.

Wednesday, the 6th day of August, 1952.

Sessions Case No. 25 of 1952.

Name of the accused:	Kundu Shetty.
Charge:	Murder – section 302 I. P. C.
Assessors:	1. Sri D. Sitharama Rai (Bunt-Hindu).
	2. Sri P. Rama Rau (Brahmin-Hindu).
	3. Sri H. Vaman Nayak (Cheptegar-Hindu).
	4. Sri N. Ganapathi Prabhu (G. S. Brahmin-Hindu).
Opinion of Assessors:	Assessors 1, 2 and 4 are of the opinion that the accused is not guilty, and the 3rd assessor that the accused is guilty under section 304 I. P. C.
Finding of the Judge:	The accused is guilty, and is convicted, under the second part of section 304 I. P. C.
Sentence:	The accused is sentenced to undergo rigorous imprisonment for 3 years under the second part of section 304 I. P. C.

The case was defended by Janab H. E. Patney, pleader, (engaged by the Court under rule 157 of the Criminal Rules of Practice and Orders).

The case was committed by Sri K. Sanjiva, Stationary Sub Magistrate, Udipi, in R. C. No. 1 of 1952 on his file (E. I. No. 74 of 1952 of Udipi Police Station.

JUDGMENT.

The accused, a boy of 17, pleads not guilty to a charge of murder.

2. At about 1-30 p. m. on 19-5-1952 there was a quarrel in the open street between the accused on the one side and P. W. 1 and his brother, the deceased, on the other, following previous quarrels earlier in the day and on the previous day between P. W. 1 and the accused and the members of their respective families over P. W. 1's refusal to pay the wages due from him to the accused's younger sister, who was in his employ. The three were spoiling for a fight and P. W. 3, a resident of the locality who was passing by, intervened and pacified them. Then he went his way; but no sooner had he turned his back than the quarrel was resumed and hot words exchanged. Then, according to P. W. 1 himself, the deceased went and took hold of the accused by his neck. At that time, the accused's mother came from her house in a lane near by armed with a stone and P. W. 1 turned his attention to her. When he turned round again, he saw the accused take the pair of scissors, M. O. 1, from his pocket and stab the deceased, who was still holding him by the neck, with it.

3. P. W. 2, a boy who lives at the street corner where the offence took place, looked over his compound wall on hearing noises of the quarrel and saw the accused stab the deceased with something while the latter was holding him by the neck. P. W. 3, who turned back on hearing the deceased's cries when he had proceeded hardly 10 yards, did not see the actual stabbing; but, like P. W. 4, another resident of the locality, he saw the deceased with a bleeding injury on his chest and the accused standing by with the scissors, M. O. 1, in his hand.

4. P. W. 1 fetched a jutka and took the deceased to the hospital; but before they reached the hospital the deceased died.

5. The accused, on the advice of P. W. 3, went forthwith to the police station with his blood-stained scissors and handing over the scissors made a statement on the basis of which the investigating officer, P. W. 6, registered a case.

6. The autopsy done by P. W. 5 that evening showed that the deceased had suffered a clean-cut wound 3/4″ × 1/2″ × 3″ deep on the right side of his chest about 3/4″ from the sternum and between the first and second ribs. The injury had penetrated the upper lobe of the right lung to a depth of 2″ and caused internal bleeding. It was of the shock and haemorrhage following this injury (which in P. W. 5's opinion is an injury sufficient in the ordinary course of nature to cause death) that the deceased died.

7. The accused was also examined by P. W. 5 that afternoon and on him P. W. 5 found three minor abrasions on the front of the neck about 2″ to the right of the middle line and about 1/2″ above the collar bone. There were other minor abrasions 1/2″ below the middle of the left collar bone and on the right hand.

8. The accused states that as soon as P. W. 3 left, the deceased took hold of him by the throat with his left hand (P. W. 1's evidence shows that the deceased was left-handed) and began beating him with his right. Meanwhile, P. W. 1 was fisting him from the rear. The deceased was pressing his throat hard and throttling him. He was suffocated and was afraid that he might be killed. To release himself from the deceased's strangle-hold and save his life he took the scissors which he was carrying in his pocket and made a thrust with it without any deliberate aim and without, in fact, knowing where the thrust would fall since his head was thrown back as a result of the deceased's hold on his throat. Immediately he had done this, the deceased released his hold and proceeding a few steps fell down bleeding. Then, as advised by P. W. 3, he (the accused) went to the police station and reported to P. W. 6 what had happened.

9. The accused relies on his statement, Exhibit D1, to P. W. 6 to show that, at the earliest opportunity, he put forward the case that he had used M. O. 1 because the deceased had caught hold of him by the neck.

10. The accused has no witnesses to examine in his defence.

11. Having regard to the evidence and the statement of the accused himself, there can be no doubt that the accused stabbed the deceased with M. O. 1 and thereby caused his death. And I think that the death was voluntarily, though not intentionally, caused. The blades of M. O. 1 are thin and very pointed so that when they are closed they form a sort of a dagger. And, when he stabbed the deceased with it – and both the position and the nature of the injury show that it was as the result of a deliberate stab rather than of a random thrust — the accused must have known that he was likely by that act to cause death. But M. O. 1, dangerous though it is, is still different from a knife or a like weapon from the very use of which on a vital part of the body, an intention to cause death or to cause bodily injury likely to cause death, can be inferred. And I think it probable that, in the course of the scuffle, with the deceased's hand on his neck, the accused was not fully aware where exactly his blow was directed.

12. The accused undoubtedly had a right of private defence; for, it was the deceased who first resorted to force by laying his hand on the accused's neck. And we may, I think, take it that P. W. 1 also joined in the assault, for, I am not impressed with his story of the interlude provided by the appearance of the accused's mother on the scene. None of the other witnesses speaks to her presence and, when P. W. 3 turned back on hearing the deceased's cry, he found P. W. 1 by his (the deceased's) side. Even so, I do not think that the right extended to the voluntary causing of death. True, P. W. 1 is a bigger and

stronger man than the accused; and so was the deceased. But their assault on the accused was with bare hands and the injuries found on the accused show that the deceased placed his hand on the top of his chest rather than on his neck. Even assuming that the deceased put his hand higher up, above the throat, I do not think that with one hand he could have got so firm a hold on the accused's neck, or exerted so much pressure on it, as to cause the accused a reasonable apprehension that he would be throttled to death or that he would suffer grievous hurt. It was not as if the accused was pinned to the ground or held in a tight embrace and thus prevented from moving. His hands were free and so was the rest of his body; and the absence of any injuries higher up than on the base of the neck shows that the deceased's single-handed grasp was not so tight that the accused could not shake himself free before he suffered any serious harm. I do not think that it can be said that the accused had reasonable cause to apprehend that either death or grievous hurt would be the consequence of the deceased's assault.

13. I might perhaps add that, even if the accused is to be regarded as having inflicted the injury on the deceased with the intention of causing death or, with the intention of causing injury sufficient in the ordinary course of nature to cause death, his act would still not be murder, for, it would fall within exceptions 2 and 4 to section 300 I. P. C. When assaulted by the deceased and P. W. 1, the accused took the weapon nearest his hand (he is a beedi worker and M. O. 1 is an implement used for cutting beedi leaves) and he gave the deceased but one blow with it. It cannot be said that he acted with premeditation or with the intention of doing more harm than was necessary or that he took an undue advantage or acted in a cruel or unusual manner.

14. I consider that the one assessor who would convict the accused under section 304 I. P. C. is right, and not the remaining three, who would acquit him altogether.

15. I convict the accused under the second part of section 304 I. P. C. Having regard to his youth and to all the circumstances of the case, I sentence him to suffer rigorous imprisonment for three years.

Dictated to the shorthand writer, transcribed by him, and pronounced in open Court, this, the 6th day of August, 1952.

(Sd.) P. T. RAMAN NAYAR,
Sessions Judge.

N. B. The accused will be lodged in the Central Jail, Cannanore.

APPENDIX.

The following witnesses were examined:

FOR PROSECUTION.

1. Somappa Sherigara.
2. Dinesh Pai.
3. Koraga Bhandary.
4. Kunhikanna.
5. Dr. K. H. Shetty, Civil Assistant Surgeon, Medical Officer, Government Hospital, Udipi.
6. Janab P. Mahammad, Sub Inspector of Police.

FOR DEFENCE.

None.

The following exhibits were filed:

FOR PROSECUTION.

P1	19— 5—1952	Wound certificate issued by P. W. 5, Dr. K. H. Shetty, regarding the injuries on the person of the accused.
P2	19— 5—1952	Postmortem certificate issued by P. W. 5, Dr. K. H. Shetty, upon examination of the deceased's body.

3591

P3	19 — 5—1952	Eyesketch of the scene of offence prepared by the Sub Inspector of Police, P. W. 6.
P4	26— 6—1952 10— 7—1952	Statement of the accused in the committal Court.

FOR DEFENCE.

D1	19— 5—1952	Statement of the accused recorded by the Sub Inspector of Police, P. W. 6, in the Police Station.

MATERIAL OBJECTS MARKED.

1. A pair of scissors.

(Sd.) P. T. RAMAN NAYAR,
Sessions Judge.

No. of words 1782.

(True Copy)

Sessions Judge.

Srinivas Printing Works, Mangalore.

D.C. No. 4488/52
168/52

To the accused
through the Superintendent
Central Jail
Cannanore

G.P. 32 (a)- 28,70,506—20-1-54.

19.

Madras Jail Department

From (Name) Sri Douglas P.Alberts, M.A.(Hons),

Designation Superintendent,

Station Central Jail, Cannanore.

Received

Registered

1-SEP 1954

To

The Secretary to Government,

Home department, Madras.

Enclosures:

No. R. /3122/54. dated 30- 8- 1954.

Sir,

Sub:- Prisoners - Advisory Board - Central Jail, Cannanore - Convict No.3591 Kundu Shetty - Release - Ordered.

Ref:- G.O. Ms. No.2455 Home department dated 17th August 1954.

.....

The receipt of the above mentioned Government Order is hereby acknowledged.

116523/19.

Superintendent.

Copy submitted to the Inspector-General of Prisons, Madras.

May be filed with the G.O.

7/9/54

Long Letter

env.° 3591. Kennedy Shelley